

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 7937 SONG THRUSH TRUST,

4 Plaintiff

5 v.

6 THE BANK OF NEW YORK MELLON, et
7 al.,

8 Defendants

Case No.: 2:18-cv-02184-APG-BNW

**Order Directing Plaintiff to Respond to
Notice of Removal**

9 Defendant The Bank of New York Mellon (BONY) removed this case on the basis of
10 diversity jurisdiction. ECF No. 1. BONY states in its removal petition that it believes the
11 plaintiff is a citizen of Nevada and California. *Id.* at 4. BONY alleges that it is a citizen of New
12 York. *Id.* BONY states that defendants Seaside Trustee, Inc. and Andrew Beroud are Nevada
13 citizens, which ordinarily would destroy diversity jurisdiction. *Id.* But BONY argues these
14 defendants were fraudulently joined because Beroud died many years ago and because Seaside is
15 the trustee under the deed of trust and claims no interest in the property. *Id.* at 4-5. BONY thus
16 contends these defendants should not be considered for diversity purposes.

17 Plaintiff 7937 Song Thrush Trust (Trust) has not moved to remand or otherwise
18 responded to BONY's assertion that these defendants were fraudulently joined. However, I have
19 an independent obligation to examine whether jurisdiction exists. *FW/PBS, Inc. v. City of Dallas*,
20 493 U.S. 215, 231 (1990). I therefore direct Trust to respond to BONY's allegations and
21 arguments regarding Trust's own citizenship and fraudulent joinder.

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1 I THEREFORE ORDER that by January 31, 2020, plaintiff 7937 Song Thrush Trust shall
2 respond to BONY's notice of removal and address the plaintiff's citizenship as well as whether
3 defendants Seaside Trustee, Inc. and Andrew Beroud were fraudulently joined.

4 I FURTHER ORDER that defendant The Bank of New York Mellon may file a reply
5 within 14 days of Trust's response.

6 DATED this 9th day of January, 2020.

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10 ANDREW P. GORDON
11 UNITED STATES DISTRICT JUDGE
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